Lsp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

CIVIL APPLICATION NO. 4520 OF 2007
with
Civil Application no.1131 of 2007
IN
FIRST APPEAL NO.195 OF 2006

Jayant H. Desar Ofaraswami ...Applicant
v/s

Hiranand Raghuvanshi & ors. ...Respondents

Mr. Machindra Deshmukh for the applicant
Mr.K.D.Shah for Respondents

CORAM : ANOOP V. MOHTA,J.
DATED : 10th October, 2007

P.C.

This is an application filed by the applicant (original plaintiff) and made the following prayers.

(a) That this Hon'ble Court be ordered to remove the seal put on 3-2-1998 by the Commissioner of City Civil Court, Mumbai on the suit flat No. 15/503 situated at Bandra Home Lands Co-op. Hsg. Society, 55, Hill Road, Bandra west, Mumbai 400 050 and further pleased to restore the past old possession of the applicant.

(b) That the Court Receiver be appointed with power to appoint the Applicant as Agent of the Court

Receiver without security and without loyalty.

2. Both the parties, therefore, considering the facts and circumstances of the case praying for appointment of receiver under Order XL Rule 1 of the Civil Procedure Code.

3. It is the plaintiffs/appellant's suit which was dismissed wherein the basic prayer was for the protection of possession of premises in question. By the impugned judgement and decree said suit is dismissed. However, this Court after considering the rival contentions admitted the first appeal on 26-4-2006. The effect and operation of the judgement was stayed on 17-11-2005 and has been in operation since then.

4. The important factum of matter is the order passed by the trial Court dated 2-2-1998 by which the Commissioner was appointed and thereafter the lock on the premises was put by the Commissioner. In the result, the premises has been under the lock since 2-2-1998 till this date. Though ordered the lock could not be removed, in view of the interim order of stay granted by this Court. The key of the flat is still lying with the Registrar. Taking note of this, the fact remain that premises in question is under lock since

then. There is no point in keeping the premises under lock like this. The Respondent/applicant in Civil Application no. 1131 of 2007 is the mother of Avinash. The Plaintiff/appellant's case revolve around that he was in possession of property in view of the transaction entered into between the husband of the applicant and, therefore, he was in possession since 1982. Admittedly, there is no initiative by the original defendants or the applicants here for possession of the suit property. The appellant/plaintiff had filed the suit restraining the original defendant/respondent against the intereference of peaceful possession. It means at the relevant time when the Commissioner visited the premises, the suit premises was admittedly in occupation of the applicant though there was question about the legal entitlement of the plaintiff/appellant of the said premises. The factum of actual possession by the plaintiff just cannot be over looked.

5. Apart from that the fact remain that there is a order passed by the Court and based upon the same the premises is under seal since 1998.

6. The rights and/or entitlement of the property in question just cannot be decided at this stage without final hearing of the appeal.

7. In the facts and circumstances of the case, I am of the view that this is a fit case where the Receiver of the Court need to be appointed under Order XL Rule 1 of the Civil Procedure Code. It is just and convenient to pass such order.

8. Now the question is who should be given the right to occupy the said premises. The common prayer against this is to appoint the respective party as an agent of court receiver without security and without loyalty.

9. The consideration which just cannnot be overlooked at this stage is

(a) the suit was filed by the plaintiff/appellant for protecting his possession.

(b) no steps whatsoever have been taken by the Respondents for taking the possession of the said premises which is alleged to be unauthorised and of without any right.

(c) the right of the premises title is a matter which cannot be decided at this stage.

10. The question is of possession which is important at this stage of the proceedings. The Court after considering the rival contentions, doubting the rights of the appellant/plaintiff to occupy the said premises , ordered to put the court seal. The fact that the applicant/respondent no.1 are the owners of the said premises also just cannot be overlooked. The applicant's/plaintiff's position, whatever may the capacity at this stage need to be considered in view of the averments made in the plaint as well as in the appeal memo.

11. The admission of the appal and grant of stay by this Court to the effect and operation of the judgement which has been in force since 2005 is also relevant factor.

(a) The Court Receiver is appointed in the suit premises with all powers as contemplated under order IX Rule 1 of Civil Procedure Code(C.P.C.).

(b) Taking all this into view, I am of the view that let the Receiver invite bids for fixing the royalties amongst the parties and appoint whosoever is highest bidder as an agent of the Court Receiver, to be in possession of the suit premises

on usual terms, as contemplated under Order XL Rule 1 of the Civil Procedure Code.

(c) The amount of royalty shall be the amount of highest bid.

(d) The Court Receiver shall pay the arrears of outgoing and taxes if any of the property from the amount of royalty received. The agent of the Court will current outoing charges and the taxes.

12. Hence, the applications are disposed of with liberty.

[ANOOP V. MOHTA,J.]